IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.529 OF 2005
IN
SUMMARY SUIT NO.1727 OF 2005

Chemisoll Adhesives P.Ltd. ..Plaintiffs

Vs.

Uday Thakkar Prop.M/s.
Shashank Enterprises ..Defendant

Mr.S.M.Shettigar for the plaintiffs

Mr.V.N.Golwala for the defendant

CORAM : S.U.KAMDAR, J
DATED : 13TH FEBRUARY, 2006

P.C.:

1. The present suit is filed for the recovery of sum of Rs.13,79,002/- arising out of various invoices and delivery challans which are annexed at Ex.A1 to Ex.A37. It is the case of the plaintiffs that the liability to pay has been acknowledged by the defendant by their letter dt.3.7.03 which is at Ex.B to the plaint. The suit claim arises out of goods sold and delivered. The defence of the defendant is that the goods covered under the some of the invoices were not received by him. It has

been stated in Affidavit in Reply that Ex.1 to Ex.17 are the copies of the alleged delivery challans which does not bear the signature and rubber stamp of the defendant but contains the signature of third party namely, Dinnesh and Kishan and thus, he contends that the goods are not received by him.

2. The next contention raised is in respect of goods covered by remaining challans which were returned back as found of inferior quality and in support thereof he has relied upon 5 letters which are annexed to Affidavit in Reply as Ex.1 to Ex.5.

3. As far as the aforesaid contentions are concerned, I do not find any substance in either of the defences. Firstly, in the delivery Challans Ex.1 to 17 admittedly there is an acknowledgment. Original are produced and it is also supported by rubber stamp of defendant herein. In the light of the aforesaid position I do not find any substance that the goods are not delivered to the defendant herein and that signature is that of an unknown person when the rubber stamp of defendant company

is affixed on the said delivery challans.

4. In so far as contention of rejection of goods is concerned, I have perused the documents Ex.1 to Ex.5 of the Affidavit in reply. None of the letters indicates that the said letters relate to the suit invoices. This is significant because in the Affidavit in Rejoinder, plaintiffs have submitted that it is true that goods were returned under Ex.1 to 5 but they do not pertain to suit invoices but earlier invoices and in respect of which the credit note is already been issued being C.Note No.74 dt.31.3.03. In the light of the aforesaid categorical statement and in absence of defendant co-relating the said letters with any of the suit invoices, it is not possible to accept the contention of the defendant that goods were found defective and the same were returned and defendant is not liable to make payment.

5. The last contention advanced by the learned counsel for defendant is there is no contract to pay interest and therefore summary suit is not maintainable. He has relied upon the judgment of

Division Bench in support of the aforesaid contention in the case of Hydraulic and General Engineering Ltd and Anr Vs. UCO Bank reported in Appeal 1998 I LJ 793. I do not find any substance because each of the invoices admittedly stipulates that interest @ 24% will be charged if payment is not made. There is no substance in any of the contentions.

6. However, with a view to give an opportunity to the defendants to defend the suit, I direct the defendants to deposit a sum of Rs.10.0 Lacs within 4 weeks failing which plaintiffs will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit of the said amount. Affidavits, list of documents to be filed within four weeks thereafter.

Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.